

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF AGRICULTURE
DAIRY AND FOOD BUREAU

BULLETIN No. 279

PRELIMINARY REPORT

OF THE

DAIRY AND FOOD COMMISSIONER

FOR THE YEAR 1915



CHAS. E. PATTON, *Secretary of Agriculture*

JAMES FOUST, *Dairy and Food Commissioner*

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LETTER OF TRANSMITTAL.

Harrisburg, Pa., December 31, 1915.

Hon. Chas. E. Patton, Secretary of Agriculture:

Dear Sir: I have the honor to submit herewith a preliminary report of the Dairy and Food Division of the Department of Agriculture for the year ending December 31, 1915. It covers the operations for the year and contains such other details as may be useful for public information. I have the honor to remain,

Very respectfully,

JAMES FOUST,
Dairy and Food Commissioner.



PREFACE

Owing to the fact that the full Report of the Department of Agriculture for the year 1915, containing the Reports of the several Bureaus of the Department will not be ready for distribution for some weeks, the Dairy and Food Commissioner has prepared the following preliminary report. In order that the information it contains may have as prompt and wide circulation as possible, its publication as a bulletin of the Department is authorized.

The complete report of the operations of the Dairy and Food Bureau will appear in the regular Annual Department Report.

CHAS E. PATTON,
Secretary of Agriculture.



THE PENNSYLVANIA FOOD LAWS

In the paragraphs introductory to my preliminary report for the year 1914, I presented a list of the fifteen laws then in force, for the enforcement of which this Bureau was held responsible. These laws were of three classes:

First. A General Food Law providing against the adulteration and misbranding of foods in general.

Second. Special food laws making particular provisions covering the sale of milk, cream, cheese, renovated butter, oleomargarine, ice cream, fresh meat, poultry, game and fish, lard, sausage, fresh eggs, vinegar, fruit syrups and non-alcoholic drinks.

Third. A Cold Storage Law covering the operations of cold storage warehouses, the storage of certain foods therein, and the sale of these foods after such storage.

The Legislature of 1915 has but slightly modified the body of laws above referred to. The Act of June 8, 1911, established a minimum standard of milk of three and one-fourth per cent butter-fat and twelve per cent. of milk solids, but an amendment dated June 2, 1915, has further provided that, in cases where the butter-fat content of milk is not below three per centum and the milk is otherwise pure and wholesome, the Dairy and Food Commissioner shall not institute legal proceedings against the producer or vendor of the milk in question if said producer or vendor shall furnish a satisfactory affidavit that nothing has been added to or taken from said milk.

The act dated May 5, 1915, regulating the sale of chicory mixed with coffee has been added to the list of the laws with whose enforcement this Bureau is charged.

RELATION OF THE DAIRY AND FOOD BUREAU TO THE DEPARTMENT OF AGRICULTURE.

The first step in the history of this Bureau was taken by the dairymen and farmers of the State when, at their urging, the Legislature created the office of Dairy and Food Commissioner and made it a branch of the service with which the State Board of Agriculture was charged. Prior to that time, there had been several laws upon the Statute books regulating the sale of oleomargarine and providing against the adulteration of cider vinegar and the sale as such

of various artificial substitutes for this orchard product. These early laws had comparatively little effect in preventing the abuses they were designed to correct, largely because there was no executive officer made specifically responsible for their enforcement. It was the aim of the farmers and dairymen to have the office conducted by a man familiar with the farming and dairying industries and in touch with the methods and conditions of these industries. The first Dairy and Food Commissioner was the Honorable Eastburn Reeder, who was appointed by the president of the State Board of Agriculture in 1893.

When in 1895 the Department of Agriculture was created at the desire of the farmers of the State to furnish an agency more compact and capable of closer co-ordination with the other executive officers of the State than was possible in the case of a body so large as the State Board of Agriculture, the office of the Dairy and Food Commissioner was made subordinate to that of the Secretary of Agriculture, and the Dairy and Food Bureau was created as one of the major divisions of the Department of Agriculture. Honorable Levi P. Wells was the first Dairy and Food Commissioner appointed by the Governor under the reorganization. The farming and dairying industries of the State have continued to maintain a deep interest in the work of this Bureau, have co-operated with it in its endeavors to secure a betterment of the food sale conditions, and clearly regard it as chiefly an agency for the safeguarding of important farm industries. Every branch of the State service presents a variety of relations and aspects, and there are frequent differences in opinion as to which of these should be regarded as that upon which the organization relations of the agency should chiefly be based. Such differences of opinion have been expressed with regard to this Bureau; but it is respectfully urged that, in view of the history of this branch of the State service, any change in its departmental relationship would be regarded by the farmers of the State as divesting them very largely of the values which they strove to gain in securing the creation of this Bureau in the Department of Agriculture.

DESIRABILITY OF EXTENSION OF PRESENT FOOD LAWS

It will be shown in later parts of this report that, since the first enactment of the General Food Law of 1895, a very radical improvement in the condition as to freedom from adulteration of the foods sold in Pennsylvania markets has taken place. The addition of undesirable preservatives and of deceptive and possibly injurious colorings has largely disappeared. The label descriptions of foods are less frequently deceptive. The sale of imitations and substitutes

is, with rare exceptions, made under properly distinguishing names and label statements. The chief point of criticism remaining, relates to the conditions of production, transport, handling, exposing for sale, and delivering to consumers of the various food products, and to the occasional use of raw and partially finished food materials that are diseased, more or less decomposed, or otherwise undesirable for similar reasons.

Undoubtedly the most important development in the food control work of many of the States of the Union in recent years has been the extension of the Service for the purpose of securing the public from the results of the use of unsanitary materials and from the preparation and handling of foods under unsanitary conditions.

It is true that paragraph six of section three of the General Food Law was designed to secure the public against unsanitary conditions in food manufacture and handling.

It might therefore appear to the casual reader of the General Food Law that its provisions are adequate to secure for the citizens of Pennsylvania the same measure of benefits that the sanitary food laws and regulations of other states such as, for example, Indiana, Louisiana and North Dakota, are affording the citizens of those commonwealths. A careful investigation of the General Food Law in these respects must, however, very promptly lead to a different conclusion. As a matter of fact, under the Pennsylvania Food Act of 1909, the history of the raw materials and the conditions of preparation and handling must be determined solely by the examination of the finished article after its sale to the consumer or to the Bureau's agent representing the consumer. The discovery of the facts that should be known is necessarily very incomplete where the means of discovery are so limited, and this phase of the food service in Pennsylvania is, therefore, much more inadequate than that which is given by many states to their citizens through their food control agencies. The man who is careless in making the foods that others are to eat, inclines to sneer at a declaration of need for cleanliness in this connection. He says that what people don't know won't hurt them; that the offense is rarely against the health in any considerable measure; that mere sentiments alone are concerned and that it would be a pity to disturb ignorance so blissful to the ultimate consumer. But civilized beings are not satisfied with the rude kitchen and table manners of the savage. The civilized man's eating is not merely a mode of getting bodily nutriment, let us say. In the well-conducted home, the table is the center of good cheer and no food will be welcomed to the menu as to whose sanitary quality and history there is even remote suspicion. Where food is domestically produced and prepared, the cleanliness and soundness of the food and of the utensils

used in its preparation are matters of prime importance in every well-conducted household. The people have a right to expect and to make sure that when their food supplies are produced and more or less fully prepared in centralized factories, the conditions of soundness and cleanliness shall be maintained just as much as they would be under the eye of the skillful housewife. Undoubtedly, reasonable legislation designed to secure these conditions is regarded as desirable by the average consumer.

It is not here meant to imply that the general conditions of food production and handling are gravely unsanitary or that exceedingly undesirable food materials are used in preparing the staple products. There are, however, many individual cases where the buildings in which foods are manufactured are gravely unsanitary, where the care of the persons of the employes is not what it should be, where water supplies are unfit, where there is undesirable contact of the persons of the employes with the food materials, where the foods in course of preparation are not adequately protected from dust, flies, and other contaminating agencies; and the existence of shops handling food wares in ways undesirable from the sanitary standpoint, is a matter of everyday knowledge. The far-sighted, enterprising food producers and food vendors realize that the existence of such establishments has a disproportionately large effect upon public confidence in all foods that are not homemade, and that the result is a considerable reduction in the volume of the trade which they would otherwise secure. While they very naturally object to laws and general statements which may reflect upon the conduct of their own establishments, many are desirous of having offenses existing in less carefully conducted factories and shops, reduced. As specific instances of this attitude upon the part of progressive food producers may be cited the resolution adopted by the Pennsylvania Association of Ice Cream Manufacturers in favor of the enactment of such sanitary measures as shall correct the abuses in certain small ice cream factories in densely populated parts of our cities; also the report of the Committee on Sanitation of the National Canners' Association, which urges sanitary legislation much more drastic and rigid than any Food Commissioner in America has ventured to propose.

What is needed is additional power on the part of the Dairy and Food Commissioner to supervise the conditions of production, manufacture, sale and delivery, and, so far as it may be necessary, to safeguard the soundness of materials and the sanitariness of surroundings essential to the production and delivery of clean, sound foods. Surely the policy of adopting modern methods for the prevention of undesirable conditions is more rational than the condemnation of products after their appearance upon the markets, for the former method conserve the food supply, the latter tends to waste it.

In this connection I welcome the opportunity to call attention to the progress made in some of our sister commonwealths in the elimination of unsanitary conditions in food manufacture and sale, and to note that these improvements have been secured without recourse to more drastic procedure of the courts. The food agents in these states visit not to punish, but to help. The introduction of methods of scoring factories, warehouses and shops as to sanitary conditions and the publication of scores, have developed a wholesome competition between food factories and food shops without the need for recourse, except in very rare cases, to legal proceedings as a means for obtaining obedience to the law and the marked improvement in sanitary conditions. There is no good reason for believing that the same policy would not be likewise productive of desirable results in Pennsylvania. Under this policy, the Food Commissioner, cooperating with the food producing and selling interests, does little more than promote the organization of these interests for their self-improvement.

It is true that such a policy would be an innovation in connection with food control work in Pennsylvania. Constructive work on the part of the Dairy and Food Bureau has in the past been practically impossible because there has been no legal authorization of such action and no financial provision for its maintenance. There is much ground for a complaint of injustice on the part of food producers and sellers, when statutory offenses are created by laws of very general scope, without some balancing provisions for assistance to the producing interests in solving the new problems raised by the new requirements. An attitude of reasonable consideration and helpfulness on the part of the State toward those whose business is subjected to those requirements should, it seems to me, appeal to every sensible citizen.

It may be objected that the suggested legislation would entail large additional expense. But experience elsewhere has shown that most of this work can be performed without any increase, or at least any large increase, in the number of agents required for such service as is already performed in Pennsylvania by the Food Bureau. All that is necessary is, in some cases, a little additional expert service and the careful instruction and organization of the working force for their added labors. The result elsewhere has been a marked gain to the public with very little additional cost and, where the policy has been constructive, with no serious demoralization of the producing and selling interests. Quite the contrary, the attitude of these interests has been one of welcome for the construction policy, which has won a more hearty cooperation for all the work of the food law executive.

There is another department of the food service, using the word "food" in its broader sense, which is at present lacking the necessary authorization for satisfactory control, namely, that comprising the production and sale of alcoholic liquors. It was undoubtedly the intention of the framers of the original General Food Law of 1895 that that law should act in the case of liquors as well as of foods, to guard against adulteration and misbranding, but a flaw in the title of the act gave ground for a decision by the Supreme Court, a few years later, that arrested all action by the Bureau to prevent the adulteration and misbranding of these commodities. There is certainly no sound reason why abuses of this character in the case of liquors should be any less condemned and less guarded against than in the case of foods, for both are articles of human consumption. The status of the production and sale of alcoholic drinks is now a matter of worldwide discussion. Whatever the public decision may be upon questions of local option and prohibition, it is clear that the fact of the present agitation upon these matters of public policy, should not be made the ground for the non-protection of the public against adulteration and fraud in case of alcoholic drinks so long as their use continues. I would respectfully urge that proper steps be taken to reenact the legislation necessary to prevent adulteration and fraud in the liquor trade.

EXECUTIVE ORGANIZATION.

The history of American police laws has shown the existence of a marked tendency to subdivide between numerous isolated offices the responsibility for the enforcement of laws dealing with the same subject matter. This tendency has various reasons for its existence. But the adoption of this kind of provision for dealing with subject matter of a single broad class necessarily results in much duplication of labor, overlapping of responsibility, executive confusion and jealousies, and a lack of proportion in the treatment of such matters as a whole. The same reasons which have operated to produce this condition of affairs in other commonwealths, exist also in Pennsylvania. It is earnestly urged that the opposite policy has proved in general more efficient and economical and far less vexatious to the interests under control than is the case where representatives from separate branches of the State Service visit and demand attention, one after another, from the same factory manager or store keeper.

FEDERAL RELATIONS.

When the passage by Congress of a National Food and Drugs Act was under discussion, the first argument in favor of such enactment was that it would assist in unifying and harmonizing the bodies of

food control law and regulations in the several commonwealths. In fact, the Food and Drugs Act of 1906 has been copied literally in many of the states and much of the confusion existing prior to that date has disappeared. Absolute uniformity in the laws of the several commonwealths upon any subject is, however, rarely, if ever, attained. Many are of the opinion that absolute uniformity would stand in the way of progress and improvement. On the other hand, there can be no sound objection to the cultivation of such cooperation between the National and State agencies that shall reduce confusion, strengthen advantageous policies and give to all the benefit of the knowledge and experience gained by each. I desire to express at this point my appreciation of the service which the United States Department of Agriculture is performing for the food control officers of the several states through its newly established office of State Relations, which is serving as a clearing house of information useful to food law officers.

LEGAL OPINIONS.

The discussion of this part of my report would be incomplete without reference to matters of general interest which have been made the subject of opinions by Deputy Attorney General William M. Hargest, in reply to questions addressed to the Attorney General from this office. The first of these opinions relates to the question, "whether a merchant holding a license to sell oleomargarine at retail can take orders for this product in cities and towns other than the one designated in the license, and fill such orders by delivering the product by vehicle or otherwise," a question of grave importance under the Pennsylvania Oleomargarine Law. The second opinion is in relation to a question of the limits of application of the Pennsylvania State Food Law where the commodity is also subject to the provisions of the National Food and Drugs Act. Several years ago in the case known as *McDermott vs. Wisconsin*, the United States Supreme Court handed down a decision determining this matter in relation to a particular case, and in so doing expressed certain principles that should govern the interpretation of this opinion as applied to other cases. This decision has lead to considerable difference in the judgments of various legal authorities, and for the guidance of the Dairy and Food Bureau the question was referred to the Attorney General's Office for an opinion, which was prepared by Deputy Attorney General William M. Hargest. These two opinions are presented in full as papers Nos. I and II of the appendix to this report. The matter of the latter opinion is so important in its relation to the general question of the police powers of the State, that it should interest every citizen.

SUMMARY OF THE BUREAU'S ACTIVITIES DURING 1915.

The organization of the Bureau has been little changed during the past year, and the methods of operation found successful in the early years of the service, have been continued with little modification.

In the immediately following paragraphs is presented a summary of the Bureau's operations during 1915. Such matters of detail as require mention will be reserved for a later section of this report.

During 1915, the chemists of the Department analyzed 8,939 samples of various food stuffs and there were 1,165 prosecutions terminated for violations of the Food Laws. The several classes of materials on account of whose adulteration or misbranding these prosecutions were instituted are as follows: Milk, 625; Coffee and Chicory, 2; Cold Storage foods, 76; Eggs, 17; Food, 176; Ice Cream, 41; Lard, 8; Non-Alcoholic Drinks, 76; Oleomargarine, 16; Renovated Butter, 2; Sausage, 25; Vinegar, 101.

There was a large increase in the number of oleomargarine licenses during the year, due to the vigilance of the field agents in prosecuting dealers selling without license.

The receipts* of the Dairy and Food Division for the past year were \$279,055.40, as against \$225,910.78 in 1914. This money has been deposited with the State Treasurer for the use of the Commonwealth and is shown to be \$193,154.04 in excess of the expenditures, which are provided for by special appropriation.

In the following table the numbers of samples analyzed and of cases terminated, and the receipts and expenditures during the period beginning with 1907 and ending 1915 are stated:

Year	Samples analyzed	Cases terminated	Receipts	Expenditures
1907,	7,400	664	\$55,732 63	\$78,455 88
1908,	8,300	300	54,580 62	69,968 20
1909,	6,200	797	86,594 15	83,700 00
1910,	5,594	667	110,802 95	79,661 65
1911,	8,200	1,029	120,993 48	83,033 15
1912,	7,204	1,049	136,125 49	81,858 55
1913,	6,846	1,025	173,789 76	75,587 12
1914,	4,827	1,010	225,910 78	73,271 41
1915,	8,939	1,165	279,055 40	85,901 36
	63,510	7,706	\$1,243,585 26	\$711,487 32

It will be seen from these figures that 1915 has been a record year with respect to each of the items included in this table. It would be an error to judge that food adulteration and misbranding

*For a classified statement of receipts and expenditures, see Appendix V.

are increasing because the number of cases terminated has been greater in 1915 than in any preceding year. The condition of the food market shows exactly the opposite to be the fact. The increasing number of cases is the result, in part, of the increased number of examinations; in part, of improved methods of examination whereby defects that previously eluded proof, can now be established with certainty; in part, to the increased experience of the agency force; and, in part to additional legislation that has defined some of the offenses more specifically.

While the major portion of the time of the Bureau's experts has, as in the past, been devoted to the current examination of miscellaneous food samples, as they have been received, it has been found possible to provide for two investigations of a more general character. The first of these was undertaken for the purpose of better enforcement of the Milk Law and was assigned to Professor C. B. Cochran, of this Bureau. This investigation related particularly to the comparative composition of the milks from different breeds of cows, with an additional study of the composition of butter, particularly in relation to its water content. The results of these investigations appear in Bulletin No. 268 of this Department, written by Professor Cochran, who has brought together in it not only the results of his own work, but the work of other American milk investigators relating to the same subject. This bulletin will be of value to every food analyst and should be of interest to all milk producers and vendors.

The second investigation deals with tomato ketchup and was made under the direction of Dr. C. H. LaWall of this Bureau. Its purpose was to make a general survey of the condition of the tomato ketchup on sale in the State with respect to the use of preservatives, saccharin, and artificial colors, the concentration of the ketchup, its acidity and the presence of moulds and bacteria. The results of this survey are printed in Bulletin No. 272. The condition of this very generally used table sauce was found to be gratifyingly excellent.

MATTERS OF SPECIAL COMMENT AS TO ADULTERATION IN PARTICULAR CLASSES OF FOODS.

In the foregoing summary it was stated that 8,939 samples of various foods were analyzed or otherwise examined. The numbers of samples of the several classes of foods are grouped in accordance with the laws under which they were examined, and are as follows:

Butter,	263
Cheese,	5
Cream,	1,025

Milk,	5,193
Cold Storage Products,	108
Eggs,	168
Fruit Syrups,	7
Ice Creams,	325
Lard,	10
Non-Alcoholic Drinks,	354
Oleomargarine,	65
Renovated Butter,	2
Sausage,	62
Vinegar,	371
Food,	900
Miscellaneous,	81
	<hr/>
	8,939
	<hr/>

A detailed summary of the subordinate kinds of foods examined, is presented in paper No. III of the Appendix. In paper No. IV of the Appendix is presented a classified list of the cases terminated, including a statement of the kinds of foods which were adulterated and misbranded and the general nature of the offense. It should be recalled that this list of cases terminated does not correspond precisely with the respective groups of foods collected for examination and examined during 1915. As stated repeatedly in previous reports, publication of legal proceedings under the food acts is deferred until the courts have pronounced judgment upon the cases presented for their decision. It follows necessarily that, owing to the time required for the legal proceedings, a case terminated in one year may have been instituted as the result of examinations made the year preceding. For the purpose, however, of a general survey of conditions, this lack of correspondence between samples examined and cases terminated within a given period, may be overlooked.

OLEOMARGARINE.

The goods effects noted in my report of 1914, resulting from the amendment of 1911 of the Oleomargarine Act so as more specifically to fix the color limit for oleos, has continued also during 1915. My judgment that oleomargarine sold under conditions such as to prevent its confusion with butter and such, also, as to permit the development of its best flavors without impairment by cottonseed oil and like high flavored ingredients, would find it an increasing market, has been amply confirmed. At the same time, butter has found a market on its own merits and free from the disadvantages that existed so long as the buying public could not tell clearly at the time of

purchase which of these two products it was securing. During the year, about sixty-five samples were examined and sixteen cases terminated for violation of the law. Of these sixteen cases, but four were instituted because of coloration of this product contrary to law. The remaining twelve cases were due to sales without proper license.

The market for renovated butter continues to be very small. The number of samples found on sale are very low; but two samples of this material were examined during the past year and two cases terminated because this product was sold without the required license.

VINEGAR.

Few food products have been subject to so many phases of adulteration and misbranding as cider vinegar. The preservation of a market for cider vinegar upon its own merits is of prime importance to the orchardist. While there are a number of wholesome vinegars produced from other materials, cider vinegar continues to have the chief demand in Pennsylvania. It is no secret to vinegar producers that the skill used in imitating cider vinegar is unsurpassed in other lines of food production and renders very difficult the task of the food experts working for the protection of the public. The Bureau has maintained its full measure of activity to discover and prevent frauds of this character. During 1915 three hundred and seventy-one vinegars were examined and one hundred and one cases terminated for violation of the Vinegar Law. Twenty of these cases were terminated because the vinegars were found to contain added water. In two or three instances the product was so low in acetic acid as not to be entitled to the name "vinegar." Nearly all the other cases were brought because the products were found to be either entirely made up of substitute materials or to consist of mixtures with cider vinegar.

MILK.

Fifty-one hundred and ninety-three samples of milk were analyzed and nearly five hundred cases were terminated because of adulterations of this product or because it contained less than the standard amount of butter-fat or solids. In one case only was added preservative (formaldehyde) found. In over two hundred and thirty cases, the evidence and tests showed adulteration of the original composition of milk by watering or skimming, or both. In the remainder of the cases, the examination indicated no more than that the milks were sub-standard in composition.

CREAM.

Ten hundred and twenty-five samples were examined and one hundred and thirty-one cases terminated because the creams were of less richness than the law required for sale under that name.

BUTTER.

Two hundred and sixty-three samples of butter and five samples of cheese were analyzed. These examinations resulted, however, in the termination of no cases.

ICE CREAM.

Ice creams to the number of three hundred and twenty-five were subjected to analysis, and forty-one cases terminated for adulteration, all of them because the ice creams in question contained less than the required amount of butter-fat.

MEAT.

Meat products other than cold storage foods included one hundred and seventeen samples of fish and oyster products and forty-seven samples of canned and fresh meats. But ten cases were terminated for adulteration of these products, most of them because the meats were so far decomposed to be unfit for food purposes, and several because goat meat was sold under the name of "lamb," and because baby veal was being offered for sale, in one case, because the material, hamburg steak, was adulterated with sulphur dioxide.

SAUSAGE.

Sixty-two samples were analyzed and twenty-five cases terminated. Out of these cases, three were brought because the sausage had become unfit for food; three because sulphur dioxide had been added; eight because cereals or vegetable flour had been used as an ingredient contrary to law; sixteen because an excess of water was found in the sausage; and in one case, beef sausage was sold as and for pork sausage.

LARD.

But ten samples of lard were analyzed during the year and eight cases terminated for adulteration or misbranding. In three of these cases, defective labeling was charged; in five, the addition of cotton-seed oil and beef stearin as substitutes in part for lard fat proper.

SAMPLES EXAMINED UNDER THE GENERAL FOOD LAW.

The examination of the food supplies coming particularly under the General Food Act included the analysis of over nine hundred samples. One hundred and seventy-six cases were terminated for

offenses under this act. Of these cases, sixty-nine, or over one-third, were instituted because of the use of sulphur dioxide, without declaration, usually in dried fruits where the law specifically permits the use of this preservative and bleaching agent, but requires that its presence be declared. This large proportion of cases of this character indicates the need for much larger exercise of care on the part of food dealers to observe the requirements of the general law. The use of benzoate of soda in excessive amounts—that is, in amounts beyond the limits fixed by law, or in materials in which it has not commonly been used, is very much more limited than it was a few years ago. Sixteen cases, or about one-eleventh of the entire number terminated, were instituted because of the illegal use of this preservative. There were three cases, also, in which imported peas were found to have been colored green by the use of compounds of copper. Of the same general class of cases, may be mentioned three of flour bleached by the use of nitrites.

Decomposition and contamination were, despite the difficulties of their detection, the bases of condemnation in thirty-six out of the one hundred and seventy-six cases terminated.

In this connection may be mentioned the special investigation made during the summer of 1915 to determine the condition of the breakfast foods in stock at the close of the summer season. The Bureau has, as a policy growing out of the condition found in a general examination made some years ago, sent each summer to every grocer a warning as to the care of breakfast food stocks. The examination of 1915 was made by Dr. William Frear of State College, Pennsylvania, who had conducted the original examination for this Bureau. The samples taken for the present examination represented very broadly the stocks of the various brands of breakfast foods found in stores in all parts of the State. The scope of the examination was limited almost exclusively to the condition of the food in respect to insect attack, and was not of such extent as to furnish material appropriate for bulletin publication. The results of this examination were most gratifying. The stocks were found in almost every instance to be in fresh cartons, clean and free from weevil attack. Pronounced contamination of this character was found in but a single sample of goods much shelf-worn. The grocers of the State are to be highly complimented for their improved care of their stocks of this class, and the public to be congratulated likewise because of the advantages this improvement affords to every consumer of breakfast food.

The general freedom of staple groceries, including canned goods, and spice supplies in particular from serious adulteration and misbranding, continues to merit specific mention. It would be a grave error for food officers to claim the exclusive merit for the vast im-

provement in these food supplies. Certainly no less credit is due to the public-spirited efforts of the Wholesale Grocers' Associations and of such progressive organizations of food producers as the National Cannery Association. The general support which such organizations have given to the relief of the public from the evils out of which grew our body of food laws, deserves high praise.

CANDIES.

Of sixty-seven samples of candy, chiefly of the cheaper "penny" varieties, only four cases were terminated. All of these cases related to so-called "licorice" products from which licorice was either entirely or almost entirely absent and imitation colors and flavors replaced it.

The appearance of glucose as an adulterant has almost disappeared. Among the cases terminated there was but one, that of honey, in which adulteration of this substitute material was found.

COFFEE.

Forty-two samples of coffee were examined and nine cases were terminated under the General Food Act for adulteration with chicory or with chicory and cereals, and two cases under the Chicory and Coffee Act of 1915 because, in one case, of the presence of cereals, and in the other case because of misbranding.

NON-ALCOHOLIC DRINKS.

Three hundred and fifty-four samples of these drinks were examined and seventy-six cases terminated. Of these, two cases were brought because the preparations were intoxicating liquors sold under the names of non-alcoholic drinks; twenty-six because of the use of saccharin; twenty-four because of the presence of undeclared artificial colors and flavors; and twenty-seven because of misbranding.

COLD STORAGE ACT.

There remains for consideration the enforcement of the Cold Storage Act. Some idea of the volume of the cold storage business during the year covered by this report may be gained from the sub-joined table. This table states the amounts of cold storage food, by classes, found in storage on March 31st, June 30th, September 30th and December 31st, 1915. These data are compiled from the quarterly reports required by law from the various cold storage warehousemen.

QUANTITIES OF FOODS IN PENNSYLVANIA COLD STORAGE WAREHOUSES.

Foods.	Units of quantity.	1915, March 31.	1915, June 30.	1915, Sept. 30.	1915, Dec. 31.
Meats:					
Whole carcasses:					
Beef,	Lbs.	883,623	31,300	164,957	588,685
Veal,	Lbs.	14,856	15,014	31,824	16,821
Lamb and mutton,	Lbs.	256,843	85,926	70,881	241,002
Hogs,	Lbs.	539,362	277,462	60,606	369,421
Parts of carcasses, classified:					
Beef,	Lbs.	1,520,549	1,151,422	958,536	787,966
Veal,	Lbs.	6,429	25,563	36,159	47,796
Lamb and mutton,	Lbs.	87,623	33,468	23,242	67,435
Hogs,	Lbs.	1,255,695	1,102,643	592,311	823,817
Game,	Lbs.	7,422	6,978	7,016	8,738
Fish,	Lbs.	405,912	1,800,188	4,190,388	4,172,492
Domestic poultry,	Lbs.	3,433,743	2,361,479	1,039,576	2,305,311
Eggs:					
In shell,	Doz.	1,677,763	18,800,169	15,903,851	2,613,541
Broken,	Lbs.	322,109	362,878	452,619	338,225
Butter,	Lbs.	906,040	4,964,877	9,744,913	3,452,796

The use of cold storage facilities for the storage of foods for periods of less than three months is very large. For this reason, the above given quarterly statements fail to afford a proper notion of the entire volume of foods held by cold storage warehouses in this State. The attitude of the cold storage warehousemen toward the enforcement of the act has been willing, in spite of the vexations due to certain terms of the law. The complaint continues that the Pennsylvania Law deprives the Pennsylvania warehouses of some business which would normally be theirs, and that the reason for this deprivation is the fact that neighboring states have no like laws. On the other hand, it is clear that if one state waits until all the states have acted or are ready to act in concert, protective legislation necessary for the public good must be indefinitely postponed. The present Cold Storage Law is criticised because of the specific time limits it imposes on the storage of different classes of foods. It is possible that amendments of these limits might be advantageous and also that some clearer and more practical definition of the cold storage warehouse and the cold storage process could be devised. On the other hand, none of the substitutes which have been brought to consideration of this office provides so adequately for the protection of the people against the sale of cold storage foods as fresh, nor so well provides for the tracing of cold storage foods from the warehouse to the consumer. The advantages of the present law in these two particulars are certainly very marked.

The inspection of warehouses as to their equipment and sanitary condition continues to reveal a very satisfactory state of affairs.

The warehousemen show entire willingness to meet promptly any reasonable suggestion in respect to sanitary conditions. The examinations of cold stored foods have been very numerous, and the examinations of such foods by chemical experts were one hundred and eight. Seventy-six cases were terminated for violation of the Cold Storage Act of 1915; three because the foods were stored beyond the legal limit; sixty-seven because the stamping requirements were not observed; and five because cold storage eggs were sold as and for fresh eggs. The difficulties of detection of cold stored eggs imported from other states as fresh eggs have been, in part at least, removed as the result of the investigations made by experts of this Department.

One hundred and sixty-eight examinations of market eggs were made, of which one hundred and twenty-three represented fresh eggs in shell, and the remainder either frozen, canned or opened stock. The experts of the Bureau have given special attention to the means of distinguishing between fresh eggs, held eggs, and cold storage eggs. Especial recognition should be given to the work of Dr. F. T. Aschman and Professor Charles H. LaWall in this relation. Seventeen cases were terminated: fourteen of which were because of the sale of eggs unfit for food purposes and three because of the having in possession of rotten eggs not properly denatured. The conditions of the egg supply in the markets and bakeries of our larger cities continue to exhibit very marked improvement as the result of the enforcement of the egg laws.

From what has been stated above, it is very manifest that most of the offenses charged under the Act of 1913 have been due to neglect of the stamping requirements. There was found in the cold storage warehouses a very much smaller amount of foods unfit for human consumption, than was present at the time the law went into force. The cold storage warehousemen cannot properly be held in equity as wholly responsible for the overstorage of foods. This is clear when it is recalled that the function of the warehouseman is simply to rent clean, cool space. The overstorage of foods is chiefly the fault of the renter. The fault is exclusively that of the warehouseman only in those cases of which he is the owner of the food stuffs stored.

ACKNOWLEDGEMENTS

I desire again to express in this connection my appreciation of the hearty support rendered to me by my office force, food agents, counsel and food experts, without whose intelligent, active and loyal assistance, the work of my Bureau could not have been successfully conducted. I am under obligation also to the Attorney General's Office, more especially to Deputy Attorney General William M. Hargest, to whose care the legal phases of the work of this Bureau have been specifically assigned, for cordial co-operation.

My acknowledgments are due also to Governor Brumbaugh, Secretary Critchfield and yourself for the warm encouragement and support I have received from my superior officers in the conduct of this work; and finally I may not, in fairness, omit to mention as important elements in the success of the work of this Bureau, the interest of the several courts of the State and of the public press.

Very respectfully,

JAMES FOUST,
Dairy and Food Commissioner.



APPENDIX

SUMMARY

The following gives a list of articles analyzed by Chemists of this Bureau during the year 1915.

Article	Number Analyzed
COLD STORAGE PRODUCTS:	
Beef,	1
Beef livers,	1
Beef and Sheep livers and kidneys,	1
Butter,	1
Eggs,	79
Fish,	9
Fish, Blue Pike,	1
Fish, Butter,	1
Fish, Sea Trout,	1
Fish, Smelts,	10
Fish, Whiting,	1
Pork loins,	1
Turkey,	1
	108
DAIRY PRODUCTS:	
Butter,	263
Cheese,	5
Cream,	1,025
Milk, butter,	8
Milk, condensed,	5
Milk, evaporated,	4
Milk, skimmed,	26
Milk,	5,150
	6,486
EGGS:	
Fresh, in shell,	123
Frozen,	13
Frozen, canned,	10
Opened,	10
	168
FOOD PRODUCTS:	
<i>Bread Cakes and Puddings:</i>	
Bread,	4
Cake, Chocolate,	3
Cake, Chocolate Iced,	2
Cake, Currant,	2
Cake, Famous,	1
Cake, Golden,	1
Cake, Golden Rod,	1
Cake, Goodie,	1
Cake, Italian,	1
Cake, Jelly Roll,	6
Cake, Layer,	2
Cake, Marble,	2
Cake (no name given),	4
Cake, Orange,	1
Cake, Sponge,	15
Cake, Tasty,	1
Cookies, chocolate covered,	1
Cornstarch,	2
Gelatin,	1
Gelatin, Granulated,	1
Go-Zo (Orange flavor),	1
Jello (Cherry flavor),	1
Jello (Lemon flavor),	1
Jello (Orange flavor),	1
Jello (Peach flavor),	1
Jello (Raspberry flavor),	1
Jello (Strawberry flavor),	2
Puddine (Lemon flavor),	1
Puddine (Orange flavor),	2
Pudding, chocolate,	1
Pudding, creamed,	1
Tapioca,	3

SUMMARY—Continued.

Article	Number Analyzed
FOOD PRODUCTS—Continued.	
<i>Breakfast Foods:</i>	
Aluminum Brand Crushed Oats,	1
Biltmore Wheat Hearts,	1
Banner Rolled Oats,	1
Brown's Triangle Breakfast Food,	1
Corn Flakes,	1
Corn-O-Plenty,	1
Cream Oatmeal,	1
Cream of Wheat,	1
Dilworth's Rolled Oats,	1
E-C-Corn Flakes, Toasted,	1
Edward's Brand Rolled Oats,	1
Elite Brand,	1
Farina,	2
Force,	1
G-O-Rolled Oats,	1
Grape Nuts,	1
H-O-Force Toasted Wheat Flakes,	1
Holland Rusks,	1
Honey Crisps Toasted Corn Flakes,	1
Jersey Corn Flakes,	1
Jersey Wheat Flakes,	1
Kellogg's Toasted Corn Flakes,	1
Mother's Crushed Oats,	2
Mother's Wheat Hearts,	1
Monarch Rolled Oats,	1
Malt Breakfast Food,	1
Maple Flakes,	1
Maple Flakes Whole Wheat, Toasted,	1
Medal Brand Corn Flakes,	1
National Oats,	1
National Rolled Oats,	1
Onward Brand Rolled Oats,	1
Oat Meal,	1
Oriental Rolled Oats,	1
Old Fashioned Scotch Brand Oatmeal,	1
Parched Farinose,	1
Pearled Barley,	1
Pettyjohn's Breakfast Food,	1
Post Toasties,	2
Post Tavern Special,	1
Premium Hominy,	1
Premier Oat Flakes,	1
Princess Royal Rolled Oats,	1
Puffed Rice,	1
Purity Brand Rolled Oats,	1
Quaker Corn Flakes,	1
Quaker Corn Puffs,	1
Quaker Puffed Wheat,	1
Rainbow Oats,	1
Ralston Wheat Food,	1
Rolled Oats,	4
Satisfaction Oat Flakes,	1
Saxon Rolled Oats,	1
Saxon Wheat Food,	1
Servins,	1
Servus Corn Flakes,	1
Shredded Whole Wheat,	1
Silver Flake Brand Corn,	1
Sunbeam Crushed Oats,	1
Toasted Corn Flakes,	1
Toasted Rice Flakes,	1
Trix Breakfast Food,	1
Un-Gro-Rolled Oats,	1
Uncle Sam's Health Food,	1
Victor Toy Oats,	1
Washington Crisps Corn,	1
Weidman's Pressed Oats,	1
Wheatena,	1
Wheatlets,	1

Canned Fruits and Vegetables:

Beans,	1
Cherries,	5
Cherries, Cocktail,	1
Cherries, Maraschino,	23
Corn,	1
Minced meat,	3
Mushrooms,	2
Peas,	6

SUMMARY—Continued.

Article	Number Analyzed
FOOD PRODUCTS—Continued.	
<i>Canned Fruits and Vegetables—Continued.</i>	
Peas, Spanish,	1
Pineapple,	1
Rhubarb,	1
Sauer Kraut,	1
<i>Dried Fruits:</i>	
Apricots,	8
Figs,	12
Peaches,	46
Pears,	1
Raisins,	5
<i>Catsup, Oil, Pickles, Sauces, etc.:</i>	
Catsup (no name given),	29
Catsup, Tobasco,	2
Catsup, Tomato,	194
Chow Chow,	1
Club Chutney,	1
Gherkins, Sweet,	9
Horseradish,	2
India Relish,	1
Oil, Cottonseed,	5
Oil, Olive,	14
Pickles, Dill,	2
Pickles, Sweet,	17
Pickles, Sweet Crooks,	1
Pickles, Sweet Mixed,	16
Pickles, Sweet Spiced,	2
Sauce, Chili,	1
Sauce, The Chef,	1
Sauce, Tomato,	1
Sauce, Worcestershire,	3
Salad Dressing,	2
Salad, Onion,	1
Salad, Tomatoette,	1
<i>Coffee:</i>	
Coffee, cups of,	15
Coffee, compound,	4
Coffee, ground,	10
Coffee, pulverized,	1
Eight O'Clock Breakfast Mixture,	1
Rhenus,	1
<i>Confectionery:</i>	
Bonbons, mixed,	1
Candied Figs,	1
Candy,	1
Candy, Brown,	1
Candy, Canes,	3
Candy, Girard Squares,	1
Candy, Green Ribbon,	1
Candy, Gum Drops,	1
Candy, Jelly Eggs,	4
Candy, Mixed,	1
Candy, Pink Ribbon,	1
Candy, Raspberry Flavor,	1
Candy, Red Ribbon,	1
Candy, Suckers,	1
Chocolate Almond Bars,	1
Chocolate Candy,	2
Chocolate Creams,	1
Chocolates, mixed,	2
Chocolate and Vanilla Candy Chickens,	1
Cocoanut Bonbons,	1
Cocoanut Caramels,	1
Cocoanut Squares,	1
Daffy Dill Candy,	1
Fudge, assorted,	1
Fudge, Cherry,	1
Fudge, Cherry and Raisin,	1
Fudge, Chocolate,	1
Fudge, Chocolate and Cocoa,	1

SUMMARY—Continued.

Article	Number Analyzed
FOOD PRODUCTS—Continued.	
<i>Confectionery—Continued.</i>	
Fudge, Coconut,	1
Jolly Cops Candy,	1
Licorice Candy,	1
Lolly Pops Candy,	4
Marshmallows,	5
Marshmallows, chocolate,	1
Marshmallows, strawberry,	1
Marshmallows, whip,	2
Montague Mello,	1
Prize Bag Candy,	1
Snow Flakes,	1
Walnut Candy Squares,	1
<i>Fish, Canned, Dried and Fresh:</i>	
Breakfast Roe,	1
Codfish,	44
Codfish, dried,	3
Codfish, flaked,	1
Codfish, salt,	2
Codfish, shredded,	9
Fish Cakes,	1
Fish, canned,	1
Fish, flaked,	2
Fish, fresh,	4
Fish, threaded,	1
Fish, Tuna,	4
Halibut,	1
Herring,	1
Oysters (fresh),	7
Salmon, canned,	8
Sardines,	20
Shrimps,	2
Shrimps, cooked,	3
Smelts,	1
Trout, Sea,	1
<i>Flavoring Extracts:</i>	
Lemon,	3
Orange,	2
Vanilla,	2
<i>Flour:</i>	
Flour, Buckwheat,	3
Cornmeal,	1
Flour, Graham,	1
Ka-Ko (prepared cake flour),	1
"Kaketop" (prepared cake flour),	1
Flour, rice,	1
Flour, soup,	1
Flour, wheat,	5
<i>Fruit Butters, Jams, Jellies and Preserves:</i>	
Butter, Peanut,	3
Jam, Blackberry,	1
Jam, Fruit,	2
Jam, Peach,	1
Jelly, Apple,	2
Jelly, Blackberry-Apple,	1
Jelly, Crabapple,	1
Jelly, Currant,	2
Jelly, Fruit (no flavor given),	1
Jelly, Grape,	1
Jelly, Grape-Apple,	1
Jelly, Raspberry,	1
Jelly, Strawberry,	1
Jelly, Strawberry-Apple,	1
Jelly, Wine,	1
Preserves, Peach-Apple,	1
Preserves, Raspberry,	1
Preserves, Strawberry,	2
Preserves, Strawberry-Apple,	1

SUMMARY—Continued.

Article	Number Analyzed
FOOD PRODUCTS—Continued.	
<i>Honey and Syrups:</i>	
Honey,	4
Syrup, crystal white,	1
Syrup, maple,	7
Syrup, table,	3
<i>Meats: Canned and Fresh:</i>	
Beef Butts,	1
Beef, Corned, canned,	1
Beef Loaf,	1
Beef, sliced,	2
Beef, sliced, smoked,	1
Beef Steak and Onions, canned,	1
Chicken,	2
Goat,	2
Hamburg Steak, canned,	1
Hamburg Steak, fresh,	6
Hog's Head,	1
Lamb, shoulder of,	1
Meat, canned,	1
Meat, Capicola,	1
Meat, cooked,	1
Meat, Crab,	1
Meat, potted (no brand given),	4
Mutton, leg of,	1
Pork,	1
Pork and Beans, canned,	1
Pork, shoulder of,	7
Pork, spare ribs, fresh,	2
Pudding and scrapple,	2
Turkey,	3
Veal,	2
<i>Soups:</i>	
Soup, Chicken,	1
Soup, Knorr,	1
Soup, Tomato,	1
<i>Spices, etc.:</i>	
Pepper, Black, ground,	2
Pepper, Cayenne,	1
Mace, Bombay,	1
Mace, ground,	1
Mustard, prepared,	1
	500
FRUIT SYRUPS:	
Orange,	1
Pineapple,	1
Raspberry,	4
Vanilla,	1
	7
ICE CREAMS:	
Bisque,	2
Caramel,	1
Cherry,	8
Chocolate,	20
Ice Cream (no flavor given),	11
Lemon,	1
Maple,	3
Maple-Walnut,	1
Maraschino,	1
Peach,	3
Pineapple,	2
Strawberry,	37
Vanilla,	235
	325

SUMMARY—Continued.

Article	Number Analyzed
LARD,.....	10
NON-ALCOHOLIC DRINKS:	
Birch Beer,	1
Cherry Bounce,	1
Cherry Cheer,	1
Cider, Apple,	2
Cider, Orange,	1
Cider, Sweet,	2
"Cream of Hops,"	2
Ginger Ale,	4
Grape Juice,	1
"Hebe,"	1
"Hop Tonic,"	1
Lemon Sour,	2
"Near Beer "	1
Orangeade,	9
Orange Julep,	1
Phosphate, Cherry,	1
Pop, Lemon,	2
Pop, Orange,	2
Pop, Strawberry,	8
Root Beer,	9
Sarsaparilla,	7
Soda, Cherry,	7
Soda, Cream,	4
Soda, Lemou,	96
Soda (no flavor given),	5
Soda, Orange,	9
Soda, Pear,	1
Soda, Pineapple,	26
Soda, Raspberry,	30
Soda, Strawberry,	103
Soda, Vanilla,	2
"Sparkade,"	1
"Top Notch Grape,"	1
"White Ribbon Temperance Beverage,"	2
	354
OLEOMARGARINE,	65
RENOVATED BUTTER,	2
SAUSAGE:	
Sausage,	2
Sausage, Bologna,	6
Sausage, Fresh Pork,	37
Sausage, Frankfurters,	4
Sausage, Meat,	2
Sausage, Pork,	5
Sausage, Pork and Beef,	2
Sausage, Vienna,	2
Sausage, Wiener,	2
	62
VINEGAR:	
Vinegar, Amber,	1
Vinegar, Apple,	6
Vinegar, Cider,	283
Vinegar, Distilled,	17
Vinegar, Fermented Syrup,,	10
Vinegar, Fermented Syrup, Distilled,	1
Vinegar, Glucose,	2
Vinegar, Malt,	7
Vinegar (no brand given),	1
Vinegar, Pickling,	2
Vinegar, Pineapple,	4
Vinegar, Red,	2
Vinegar, Rhine Wine,	1
Vinegar, Rex Amber Sugar,	1

SUMMARY—Continued.

Article	Number Analyzed
VINEGAR—Continued.	
Vinegar, Tarragon Flavor,	1
Vinegar, White,	16
Vinegar, White, Distilled,	8
Vinegar, White Wine,	8
	371

MISCELLANEOUS PRODUCTS:

Auchovy Paste,	1
Apples,	2
Baking Powder,	2
Canuing Compound,	13
Chestnuts,	3
Cocoa,	4
Cocoaaut, shredded,	1
Codfish Cakes,	3
Codfish Tablets,	1
Crisco,	1
Egg Macaroni,	2
Egg Noodles,	11
Egg Powder,	1
Glace Apricots,	1
Glace Fruit (no name given),	2
Ham Fat,	1
Health Bran,	1
Ice Cream Cones,	2
Jell-O-Cream Powder,	1
Jello Ice Cream Powder,	1
Jello Ice Cream Powder, Chocolate flavor,	1
Jello Ice Cream Powder, Lemon flavor,	1
Jello Ice Cream Powder, Strawberry flavor,	1
Jelly Powder,	1
Junket Tablets,	1
Lemons,	1
Macaroni,	4
Meat-O,	2
Mushroom Powder,	1
Paste, Lobster,	1
Paste, Tomato,	1
"Polly Whats,"	1
Pulp, Tomato,	5
Radishes,	1
Rice,	1
Snow Mello,	1
Spaghetti,	2
Sugar, granulated,	1
	81

RECAPITULATION.

Butter,	263
Cheese,	6
Cream,	1,025
Milk,	5,193
Cold Storage Products,	108
Eggs,	168
Fruit Syrups,	7
Ice Creams,	325
Lard,	10
Non-Alcoholic Drinks,	354
Oleomargarine,	65
Renovated Butter,	2
Sausage,	62
Vinegar,	371
Food,	981
	8,939

CASES TERMINATED

THE FOLLOWING TABLE GIVES A LIST OF ARTICLES ANALYZED BY
CHEMISTS AND FOUND TO BE IN VIOLATION OF THE FOOD LAWS,
AND THE NUMBER OF SAMPLES OF EACH PRODUCT ON WHICH
PROSECUTIONS WERE BASED AND TERMINATED.

COFFEE AND CHICORY ACT, 1915, IN VIOLATION OF—

Coffee Compound, misbranded,	1
Eight O'clock Breakfast Mixture, containing Cereal,	1

2

COLD STORAGE ACT, 1913, IN VIOLATION OF—

Cold Storage Beef Livers, not properly marked,	1
stored beyond the legal limit,	1
Cold Storage Eggs, sold as and for fresh eggs,	5
not stamped as required by law,	63
stored beyond the legal limit,	1
Cold Storage Meat, stored beyond the legal limit,	1
Cold Storage Pig's Ears, not stamped as required by law,	1
Cold Storage Pork Loins, as chilled and not stamped as required by law,	1
Cold Storage Smelts, not stamped as required by law,	2

76

EGG ACT, 1909, IN VIOLATION OF—

Eggs, frozen and canned, unfit for food purposes,	1
having in possession rotten eggs not properly denatured,	2
having in possession rots and spots not properly denatured,	1
stale eggs sold as fresh,	1
unfit for food purposes,	10
unfit for food purposes, to be used in bakery,	2

17

FOOD ACT, 1909, IN VIOLATION OF—

Apricots, dried, contained sulphur dioxide,	10
Glaze, contained sulphur dioxide,	4
Brazil Nuts and English Walnuts, unfit for food purposes,	1
Butter, contained an excessive amount of water,	1
Candy, contaminated and unfit for food,	1
Candy Fudge, coated with a resinous glaze,	6
assorted, coated with a resinous glaze,	1
Cake, (no name given), artificially colored in imitation of eggs,	2
Sponge, artificially colored in imitation of eggs,	1
Catsup, (no name given), adulterated,	1
contained an excessive amount of sodium benzoate,	2
Tomato, contained an excessive amount of sodium benzoate,	5
Cherries, canned, contained sulphur dioxide,	2
Cocktail, contained sulphur dioxide,	1
Maraschino, contained sulphur dioxide,	5
Chestnuts, unfit for human consumption,	1

CASES TERMINATED—Continued.

FOOD ACT, 1909, IN VIOLATION OF—Continued.

Chicken, unfit for food purposes,	1
Chocolate Almond Dates, misbranded,	1
Candy chicks, adulterated,	1
Candy, mixed, colored with coal tar color in imitation of chocolate,	1
Cocoa, powdered, decomposed and unfit for food purposes,	1
Cocoanut Bon bons, contained cereals,	2
contained starch as a filler,	1
Squares, coated with a resinous glaze,	1
Coffee, adulterated,	4
contained chicory,	4
contained chicory and cereal,	1
Eggs, stale eggs sold as fresh eggs,	17
unfit for food purposes, using in bakery,	1
Egg Noodles, artificially colored in imitation of eggs,	1
Fish, unfit for food purposes,	2
Butter, unfit for food purposes,	1
Cod, contained an excessive amount of sodium benzoate,	2
Sea Bass, unfit for food purposes,	1
Shrimps, unfit for food purposes,	1
Flour, contained nitrites,	3
contaminated, unfit for food purposes,	1
Goat meat, sold as and for lamb,	1
Grapes, decomposed, unfit for food purposes,	1
Ham Fat, decomposed,	1
Hamburger Steak, contained sulphur dioxide,	1
Hickory Nuts, rancid and mouldy,	1
Honey, adulterated with glucose,	1
Licorice Candy Babies, adulterated,	1
contained no licorice,	1
Drops, adulterated,	1
Gum Drops, artificially colored and flavored,	1
Meat, decomposed,	2
diseased,	1
Milk, contained decomposed filth,	1
Olive Oil, adulterated,	1
consisting entirely of cotton-seed oil,	1
Orange Extract, adulterated,	1
Peaches, dried, contained sulphur dioxide,	47
Peas, canned, colored green with compound of copper,	2
Italian, colored green with compounds of copper,	1
Spanish, wormy, unfit for food purposes,	1
Pickles, contained an excessive amount of sodium benzoate,	2
Mixed, contained an excessive amount of sodium benzoate,	1
sweet, contained an excessive amount of sodium benzoate,	6
Pork Shoulders, decomposed,	1
Potatoes, decomposed, unfit for food purposes,	1
Rabbits and Muskrats, decomposed, putrid,	1
Raisins, contaminated, unfit for food purposes,	1
Raspberry Syrups, adulterated,	1
Veal, immature,	2

CASES TERMINATED—Continued.

ICE CREAM ACT, 1909, IN VIOLATION OF—

Ice Cream, Caramel, low in butter fat,	1
Chocolate, low in butter fat,.....	1
(no flavor given), low in butter fat,	2
Strawberry, low in butter fat,	5
Vanilla, low in butter fat,	32
	<hr/>
	41

LARD ACT, 1909, IN VIOLATION OF—

Lard, adulterated,	3
consisting of cotton-seed oil and beef stearin; sold for pure lard,	2
not properly marked,	3
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	8

MILK ACT, 1911, IN VIOLATION OF—

Cream, adulterated,	2
low in butter fat,	129
Milk, adulterated,	7
below legal standard,	15
below legal standard and partially skimmed,	1
below legal standard and watered,	6
containing formaldehyde,	1
low in butter fat,	65
low in butter fat and partially skimmed,	1
low in butter fat and total solids,	168
low in butter fat and total solids, partially skimmed,	11
low in butter fat and total solids, skimmed,	139
low in butter fat and total solids, watered,	41
low in total solids, watered,	13
low in butter fat and watered,	2
watered,	24
	<hr/>
	625

NON-ALCOHOLIC DRINK ACT, 1909, IN VIOLATION OF—

Birch beer, artificially colored,	1
"Blackberry," An intoxicating drink sold for non-alcoholic drink,.....	1
"Cherry," An intoxicating drink sold for non-alcoholic drink,	1
Cider, artificially colored and flavored,	1
Champagne cider, misbranded, not champagne cider,	1
Pop, Strawberry, artificially colored and flavored,	4
misbranded,	1
Soda, Cherry, Artificially colored,	2
artificially colored and misbranded,	1
Grape, misbranded, contained no grape, colored with coal tar dye,	1
Lemon, containing saccharin,	13
misbranded,	2
misbranded, contained no lemon juice,	3
Orange, containing saccharin,	1
misbranded,	10
misbranded, colored with coal tar dye,	3
Pineapple, containing saccharin,	2
Raspberry, artificially colored,	1

CASES TERMINATED—Continued.

NON-ALCOHOLIC DRINK ACT, 1909—Continued.

artificially colored and flavored,	2
artificially flavored,	1
misbranded,	1
misbranded contained no raspberry juice,	1
Strawberry, adulterated,	1
artificially colored and flavored,	2
artificially flavored,	5
containing saccharin,	11
misbranded, containing no strawberry juice,	3
	<hr/>
	76

OLEOMARGARINE ACT, 1901, IN VIOLATION OF—

Oleomargarine, colored sold as and for butter,	1
colored, sold without a license,	1
colored and served with meal,	1
colored and served in restaurant,	1
served in restaurant, no license,	2
served in boarding-house, no license,	1
served in hotel, no license,	2
sold as and for butter, no license,	1
sold at wholesale without a license,	1
sold at wholesale and peddling,	1
sold without a license,	4
	<hr/>
	16

RENOVATED BUTTER ACT, 1901, IN VIOLATION OF—

Renovated butter, served without license,	2
	<hr/>
	2

SAUSAGE ACT, 1901, IN VIOLATION OF—

Sausage, adulterated,	1
containing added water,	5
containing vegetable flour and added water,	1
decomposed,	1
beef, as and for pork sausage,	1
fresh, containing added water,	1
bologna, containing cereals,	1
pork, containing excess of water,	1
containing cereals,	2
containing cereals and added water,	1
containing added water, cereal and sulphur dioxide,	2
decomposed,	1
fresh, containing added sulphites,	1
containing added water,	4
unfit for food,	1
Vienna style, containing vegetable flour and added water, ..	1
	<hr/>
	25

VINEGAR ACT, 1901, IN VIOLATION OF—

Vinegar, adulterated,	6
Amber, distilled and colored,	1
Apple, adulterated with water,	1

CASES TERMINATED—Continued.

VINEGAR ACT, 1901, IN VIOLATION OF—Continued.

Brown, adulterated,	1
distilled and artificially colored,	2
Cider, acetic acid and water, colored with caramel, below standard in acidity,	1
acetic acid and water, colored, as and for cider vinegar, ..	1
adulterated,	32
containing added water,	19
containing distilled vinegar,	1
consisting of distilled vinegar colored with caramel,	3
consisting entirely of distilled vinegar,	1
mixture of cider and cider vinegar,	1
Distilled, artificially colored,	3
artificially colored and low in acetic acid,	1
artificially flavored as and for pineapple vinegar,	1
as and for cider vinegar,	3
as and for pineapple vinegar,	1
colored as and for pineapple vinegar,	2
as and for white wine vinegar,	2
below standard,	1
below standard in acetic acid,	1
colored as and for cider vinegar,	8
Pineapple, artificially flavored, misbranded and colored,	2
Red, Distilled and colored,	1
Rex amber, sugar vinegar for cider vinegar,	1
Syrup, as and for cider vinegar,	1
fermented as and for cider vinegar,	1
fermented, containing distilled vinegar,	1
White distilled vinegar below the standard,	1
	<hr/>
	101
	<hr/>
Total number of cases terminated,	1,165
	<hr/>

**RECEIPTS OF THE DAIRY AND FOOD BUREAU FROM
JANUARY 1st TO DECEMBER 31st, 1915, INCLUSIVE.**

Oleomargarine License Fees,	\$241,708 10
Milk Fines, Act of 1911,	14,218 35
Pure Food Fines,	6,945 60
Vinegar Fines,	3,712 90
Cold Storage License Fees,	3,650 00
Egg Fines,	1,675 00
Non-Alcoholic Drink Fines,	1,517 45
Sausage Fines,	1,340 60
Oleomargarine Fines,	1,120 00
Cold Storage Fines,	1,086 80
Ice Cream Fines,	960 00
Renovated Butter License Fees,	600 00
Lard Fines,	207 10
Renovated Butter Fines,	200 00
Fruit Syrup Fines,	63 50
Coffee and Chicory Fines,	50 00
<hr/>	
Total receipts for the year,	\$279,055 40

**AMOUNTS EXPENDED FROM THE APPROPRIATION FOR
THE MAINTENANCE OF THE WORK OF THE DAIRY AND
FOOD BUREAU OF THE PENNSYLVANIA DEPARTMENT OF
AGRICULTURE FOR THE YEAR 1915.**

Clerical and Stenographers,	\$8,551 50
Special Agents' Salaries,	26,127 50
Attorneys, Assistants and special,	9,714 39
Chemists' Services and Expenses,	18,459 25
Enforcing Cold Storage Law,	8,246 23
Traveling and Agents' Expenses,	14,802 49
<hr/>	
Total expenditures for the year,	\$85,901 36

OFFICE OF THE ATTORNEY GENERAL,

Harrisburg, Pa., February 3, 1916.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.:

Sir: Your favor of January 25, requesting an opinion of this Department as to whether a merchant holding a license to sell oleomargarine at retail, can take orders for the product in cities and towns other than the one designated in the license, and fill such orders by delivering the product by vehicle or otherwise, is at hand.

The oleomargarine law of May 29, 1901, which was amended by the Act of June 5, 1913, P. L. 412, provides in Section 1.

"That no person, firm, or corporation shall, by himself, herself, or themselves, or by his, her or their agent or servant, nor shall any officer, agent, servant or employee of any person, firm or corporation, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine unless such person, firm or corporation shall have first obtained a license and paid a license fee as hereinafter provided."

Section 2 provides, in part:

"That any person, firm, or corporation, and any agent of such person, firm or corporation, desiring to manufacture, sell or offer or expose for sale, or have in possession with intent to sell, oleomargarine, butterine, or any similar substance not made or colored so as to look like yellow butter, shall make application for a license so to do in such form as shall be prescribed which application, in addition to other matters which may be required to be stated therein by the said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed business is intended to be carried on if the said application is satisfactory to said Dairy and Food Commissioner he shall issue to the applicant or applicants a license authorizing him, her, or them to engage in the manufacture or sale of oleomargarine such license shall not authorize the manufacture, sale, exposing for sale or having in possession with intent to sell, oleomargarine, butterine, or any similar substance, at any other place than that designated in the application and license."

Strictly construing the second section just quoted, it would seem to require a license not only from every person, firm or corporation engaged in the sale or manufacture but also from every agent of such person, firm or corporation, but the language of the first section

indicates that when the license is obtained by a person, firm or corporation, such license shall authorize the agents, servants and employes thereof to manufacture and sell oleomargarine.

Under the provisions of this law it is clear that both the person and the place are licensed. It is also clear that oleomargarine could not be sold by an unauthorized person at an authorized place or by an authorized person at an unauthorized place. In order to bring the sale within the terms of the statute, it must be made by a person who has been licensed, through himself or his agent, and from a place which has been licensed. The license issued to a person, firm or corporation, does not authorize an itinerant business in oleomargarine. This act must be construed to carry out the Legislative intent. Manifestly one of the purposes of the Act was to have the oleomargarine business under the inspection and supervision of the Dairy and Food Commissioner. If a license were a roving commission to permit taking of orders in other cities and towns other than one designated in the license, it would make inspection or supervision by the Dairy and Food Commissioner extremely difficult.

If such a scheme could be followed, one person might take out one license for an entire county and transact his business by means of traveling agents taking orders therefor, or even extend such business into other counties.

It might be an unreasonable construction to hold that every clerk of a retail dealer who has a license to sell oleomargarine, must be also licensed because the act says that every agent of such person, firm or corporation desiring to manufacture, sell, offer or expose for sale, oleomargarine, shall make an application for a license so to do. Where a clerk or employee, in the regular course of his business is taking orders for other goods and along therewith, and as incident to such business takes orders for oleomargarine to be delivered with the other products, such transactions may fairly be covered by the retailer's license. On the other hand, it would be just as unreasonable, and do violence to the Legislative intent, to say that under this statute, a license to sell oleomargarine at retail, would permit the agents of the holder of the license to travel around into other cities and towns for the purpose of obtaining orders, even though the orders were to be filled by subsequent delivery from the place licensed. No such legislative intention can be gathered from this statute. The language is:

"Such licenses shall not authorize the manufacture or sale at any other place than that designated in the application and license."

To be more specific: If a retail merchant, who holds a retail oleomargarine license, has regular clerks taking orders for groceries, and orders for oleomargarine are taken along with other orders, by

such regular clerk or employee and the oleomargarine is marked and set apart and the name placed on each package, in the place licensed, and delivered as and when the other goods are delivered, such a transaction would be within the license of the retail dealer.

It may be that there are retail dealers in cities whose regular trade extends into outlying districts. In such instances sales made, as above indicated, on orders taken in such territory, would be within the license.

But I am of opinion that a license to sell oleomargarine at retail does not give the holder thereof the right to send agents and canvassers to take orders, especially for oleomargarine, into territory into which the business of such retailer would not ordinarily extend, particularly into other cities and towns in which there are other similar licenses.

Very truly yours,

Wm. M. HARGEST,
Deputy Attorney General.

OFFICE OF THE ATTORNEY GENERAL,

Harrisburg, Pa., November 19, 1915.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.:

Sir: Your favor of recent date was received. You propound the following question:

"If a box containing two or more dozen bottles of catsup, properly sealed and labeled in conformity with the National Food and Drugs Act of June 30, 1906, and shipped from another state to a retail merchant in Pennsylvania, is opened and the bottles placed upon the shelves of the store for sale, and upon purchase by an agent of this Department and on analysis, the catsup is found to violate the Pure Food Laws of this State, can the Pennsylvania laws be enforced?"

With your request you submit a copy of a letter of the State Food and Drug Commissioner of Indianapolis and an opinion of the Attorney General of Indiana, all to the effect that there can be no interference with a grocer who sells to his customer a single bottle of catsup, if it complies with the National Food and Drugs Act,

even though it violates the laws of the State, when such bottle of catsup was a part of a shipment from another state and originally packed in a larger case or box.

Your inquiry and the correspondence submitted are the result of a misconstruction of the case of *McDermott vs. Wisconsin*, 228 U. S. 115, 57 *Lawyers Edition* 754. The impression prevails since the opinion in that case, that a state cannot enforce its pure food laws against single, sealed packages of food misbranded or adulterated according to State laws, if such single packages comply with the provisions of the National Food and Drugs Act of June 30, 1906, (34 St. at Large, 768, Chapter 3915, U. S. Comp. Stat., Supp. 1911, page 1354). This impression is not justified by the decision itself. The precise questions in that case were,

First. Whether the word "package" as used in the Food and Drugs Act was limited to "original package" as understood in interstate commerce, or whether it included the goods upon the shelves of a local merchant for sale.

Second. Whether the Wisconsin law, which required the goods to contain the exclusive labels provided by that statute, and, in effect, prohibited the labels required under the National Food and Drugs Act, was beyond the power of the state to enforce.

The plaintiff in error, a retail merchant in Oregon, Wisconsin, was convicted of violating the Wisconsin statute because he had in his possession with intent to sell and offered for sale, "Karo Corn Syrup" which was not labeled according to the Wisconsin law providing that "the mixture or syrups designated in this section *shall have no other designation or brand than herein required,*" etc. He had purchased from wholesale grocers in Chicago twelve half gallon tin cans of Karo Corn Syrup, the shipments being made in wooden boxes containing the cans, and when the goods were received at the store, the cans were taken from the original boxes and placed on the shelves for sale, at retail. The cans were labeled in accordance with the National Pure Food and Drugs Act. That act provides, as stated in the opinion of *McDermott vs. Wisconsin*, page 130:

"And as to food, if it shall be labeled or branded so as to deceive or mislead a purchaser, or purport to be a foreign product when not so, or, if the contents of the *package* as originally put up shall have been removed in whole or in part, and other contents placed in such *package*; or, if the *package* fail to bear a statement of the label as required, or, if in *package* form and the contents are stated in terms of weight or measure, and they are not plainly and correctly stated on the outside of the *package*; or, if the *package* containing it or its label contain any design or device regarding the ingredients or the substances contained therein which are false or misleading in character, the food shall be deemed misbranded."

The Court, speaking through Mr. Justice Day, said:

"That the word 'package' or its equivalent expression, as used by Congress in sections 7 and 8 in defining what shall constitute adulteration and what shall constitute misbranding within the meaning of the act, clearly refers to the immediate container of the article which is intended for consumption by the public there can be no question. *And it is sufficient, for the decision of these cases, that we consider the extent of the word 'package' as thus used only, and we therefore have no occasion, and do not attempt, to decide what Congress included in the terms 'original unbroken package' as used in the second and tenth sections, and 'unbroken package' in the third section.*" Within the limitations of its right to regulate interstate commerce, Congress is manifestly aiming at the contents of the package as it shall reach the customer, for whose protection the act was primarily passed, and it is the branding upon the package which contains the article intended for consumption itself which is the subject matter of regulation. Limiting the requirements of the act as to adulteration and misbranding simply to the outside wrapping or box containing the packages intended to be purchased by the consumer, so that the importer, by removing and destroying such covering, could prevent the operation of the law on the imported article yet unsold, would render the act nugatory and its provision wholly inadequate to accomplish the purpose for which it was passed."

The Court also said, page 135:

"In the view, however, which we take of this case, it is unnecessary to enter upon any extended consideration of the nature and scope of the principles involved in determining what is an *original package*. For, as we have said, keeping within its Constitutional limitations of authority, Congress may determine for itself the character of the means necessary to make its purpose effectual in preventing the shipment in interstate commerce of articles of a harmful character, and to this end may provide the means of inspection, examination, and seizure necessary to enforce the prohibitions of the act."

And on page 136:

"To determine the time when an article passes out of interstate into state jurisdiction for the purpose of taxation is entirely different from deciding when an article which has violated a Federal prohibition becomes immune. The doctrine (of original package) was not intended to limit the right of Congress, now asserted, to keep the channels of interstate commerce free from the carriage of injurious or fraudulently branded articles, and to choose appropriate means to that end. The legislative means provided in the Federal law for its own enforcement may not be thwarted by state legislation having a direct effect to impair the effectual exercise of such means."

The Court held that Congress could employ the means to keep interstate commerce free from misbranded articles, even to an inspection on the shelves of a retail grocer after the goods had been removed from the "original package," as known in interstate commerce.

The Court also held that a State statute which interfered with such supervisory power over the avenues of commerce was an excessive and illegal exercise of the State's power.

This is the full extent to which the case of *McDermott vs. Wisconsin* goes.

There is no Pennsylvania pure food statute which excludes, or requires the obliteration of, any labels placed on foods under the United States Food and Drugs Act, nor is there any Pennsylvania statute which interferes with the inspection by the Federal authorities of goods either in original packages, or upon the shelves of retail merchants.

The precise question then, is whether a Pennsylvania statute may be enforced even if its provisions go farther than the Federal law, but do not interfere with the operation of the Federal statute.

Referring again to the much discussed case of *McDermott vs. Wisconsin*, it is seen that the Court was careful to say in terms that the regulations of Congress would not prevent enforcement of similar regulations by a state for the protection of its people.

Mr. Justice Day said, page 131:

"While these regulations are within the power of Congress, it by no means follows that the State is not permitted to make regulations, with a view to the protection of its people against fraud or imposition by impure food or drugs. This subject was fully considered by this court in *Savage v. Jones*, 225 U. S. 501, 56 L. Ed. 1182, 32 Sup. Ct. Rep. 715, in which the power of the state to make regulations concerning the same subject matter, reasonable in their terms, and not in conflict with the act of Congress, was recognized and stated, and certain regulations of the state of Indiana were held not to be inconsistent with the food and drugs act of Congress."

Again, on pages 133, 134:

"Conceding to the state the authority to make regulations consistent with the Federal law for the further protection of its citizens against impure and misbranded food and drugs, We think to permit such regulation as is embodied in this statute is to permit a state to discredit and burden legitimate Federal regulations of interstate commerce, to destroy rights arising out of the Federal statute which have accrued both to the government and the shipper, and to impair the effect of a Federal law which has been enacted under the Constitutional power of Congress over the subject."

The essence of the decision is found in these words, pages 132-134:

"To require the removal or destruction before the goods are sold of the evidence which Congress has by the food and drugs act, as we shall see, provided, may be examined to determine the compliance or non-compliance with the regulations of the Federal law, is beyond the power of the state. *The Wisconsin act which permits the sale of articles subject to the regulations of interstate commerce only upon condition that they contain the exclusive labels required by the statute is an act in excess of its legitimate power.*"

The question you propound is practically settled by the case of *Savage vs. Jones*, 225 U. S. 501, 56 L. Ed. 1182.

That was a suit to restrain the State chemist of Indiana from enforcing an act of that state relating to concentrated commercial feeding stuffs. It was alleged that the Indiana act which required certain labels to be affixed to the package, disclosing in part the ingredients and also required that certain stamps, purchased from the state chemist, should be attached as an inspection fee, interfered with interstate commerce and also because Congress had legislated upon the subject by the National Food and Drugs Act, its jurisdiction was exclusive, and therefore the Indiana Act could not be enforced as to packages received from outside the state and sold by the importing purchaser in the same packages.

The court held that the act was not an unconstitutional regulation of interstate commerce, and also, as stated in the syllabus in 56 Law. Ed. 1183, that:

"Congress did not by the passage of the Food and Drugs Act of June 30, 1906, for the prevention of adulteration and misbranding of foods and drugs when the subject of interstate commerce preclude the enactment of the Indiana Act prohibiting sales of concentrated commercial feeding stuffs *in the original packages*, unless there be a compliance as to inspection and analysis and the disclosure of ingredients * * * * * and with its incidental provision for the filing of a certificate, for registration, and for labels and stamps."

Mr. Justice Hughes, writing the opinion of the Court, said, page 524:

"The State cannot, under cover of exerting its police powers, undertake what amounts essentially to a regulation of interstate commerce, or impose a direct burden upon that commerce." (citing many authorities).

"*But when the local police regulation has real relation to the suitable protection of the people of the State, and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to its constitutional authority.*" (Citing many authorities).

And on page 526, quoting from *Plumley vs. Mass.*, 155 U. S. 461, he said:

“Such legislation may, indeed, directly, or incidentally affect trade in such products transported from one state to another state. But that circumstance does not show that laws of the character alluded to are inconsistent with the power of Congress to regulate commerce among the several states.”

Again, on page 529:

“The object of the food and drugs act is to prevent adulteration and misbranding, as therein defined. It prohibits the introduction into any state from any other state “of any article of food or drugs which is adulterated or misbranded, within the meaning of this act.” The purpose is to keep such articles ‘out of the channels of interstate commerce, or, if they enter such commerce, to condemn them while being transported or when they have reached their destinations, provided they remain unloaded, unsold, or in original unbroken packages.’”

And on page 532:

“Can it be said that Congress, nevertheless, has denied to the state, with respect to the feeding stuffs coming from another state and sold in the original packages, the power the state otherwise would have to prevent imposition upon the public by making a reasonable and non-discriminating provision for the disclosure of ingredients, and for inspection and analysis? If there be such denial it is not to be found in any express declaration to that effect. Undoubtedly Congress, by virtue of its paramount authority over interstate commerce, might have said that such goods should be free from the incidental effect of a state law enacted for these purposes. But it did not so declare.”

In the case of *Simpson vs. Sheperd*, 230 U. S. 352, 57 L. Ed. 1511, the Court said:

“State inspection laws and statutes designed to safeguard the inhabitants of a state from fraud and imposition are valid when reasonable in their requirement, and not in conflict with Federal rules, although they may affect interstate commerce in their relation to articles prepared for export, or by including incidentally those brought into the state and held for sale in the original imported packages.”

If the state can, as decided in *Savage vs. Jones*, require an additional label disclosing ingredients and also stamps covering cost of inspection *to be attached to the original package*, without unconstitutional interference with interstate commerce, or with the operation of the National Food and Drugs Act, it certainly can enforce its own laws when food in violation thereof is offered for sale by a citizen of the state to other citizens of the state, even though the food was imported from another state.

It is therefore clear that the pure food statutes of the State of Pennsylvania which do not interfere with the labeling provided by the National Food and Drugs Act, or with the inspection of the Federal authority under that act, do not even incidentally interfere with interstate commerce.

There is another consideration. The enforcement of the pure food laws of the State practically begins where the Federal control ends.

In the case of *McDermott vs. Wisconsin*, it is said in the opinion, page 136:

"To make the provisions of the act effectual, Congress has provided not only for the seizure of the goods while being actually transported in interstate commerce, but has also provided for such seizure after such transportation and while the goods remain 'unloaded, unsold or in original and unbroken packages.' The opportunity of inspection enroute may be very inadequate. *The real opportunity of government inspection may only arise when, as in the present case, the goods as packed have been removed from the outside box in which they were shipped, and remain, as the act provides, 'unsold. It is enough, by the terms of the act, if the articles are unsold, whether in original packages or not.'*"

The Pennsylvania statutes usually contain the language making it illegal to "sell, offer for sale, expose for sale or have in possession with intent to sell," any adulterated or misbranded article of food.

The Federal statute follows the goods from another State into Pennsylvania and on to the shelves of the retail merchant. When the goods get upon the shelves of the retail merchant the State inspection begins. There is no conflict of authority. The enforcement of Pennsylvania laws against goods on shelves of a retail merchant, is not even an incidental control of interstate commerce, nor is it any interference with Federal inspection.

I am aware that this opinion does not appear to be in harmony with the case of *Corn Products Refining Company vs. Weigle*, 221 *Federal Reporter*, 998, and the decree entered in that case which is before me, but not reported, certainly is not in harmony with this opinion, but there is no case in the United States Supreme Court which has gone to the length of the case just quoted, and, as I understand the decisions of that Court, the case of *Corn Products Refining Company vs. Weigle* has gone farther than any other case in that it completely ousts state inspection of goods that were once in interstate commerce, if such goods happen to be labeled in conformity with the National Food and Drugs Act, and prevents the operation of any state statute upon such goods, even as between a retail resident dealer and the resident consumer of the state. I cannot agree that the passage of the National Food and Drugs Act has such sweeping effect in destroying the police power of the state.

Therefore, specifically answering your inquiry, I am of opinion that after purchase and analysis of a bottle of catsup from the shelves of a store of a retail merchant in Pennsylvania, such catsup is found to violate the pure food laws of this State, such laws may be enforced even though the catsup has been shipped from another state and is sealed and labeled in conformity with the National Food and Drugs Act of June 30, 1906.

I return herewith the correspondence submitted with your request.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN THE COURT OF QUARTER SESSIONS OF BLAIR COUNTY.

COMMONWEALTH
vs.
J. A. KOLLER, *et al.*

}

In re. rule to show cause why portion of sample taken by the Commonwealth should not be turned over to defendant for analysis.

By the Court. So far as the rule for a bill of particulars is concerned, as ruled by the supreme court in *Commonwealth v. Powell*, 23 Sup. Ct. 372, a bill of particulars in a criminal case is not a matter of right, but is only an appeal to the sound discretion of the court. My recollection is that in some of the pure food indictments in cases tried in this court there was simply an allegation in the indictment that the pure food act had been violated, without specifying the particular violation. I am inclined to think that that indictment was perfectly good. We have our act of assembly which provides that an indictment shall be deemed sufficient which simply follows the words of the act of assembly, and if this indictment had simply followed the words of the act of assembly, and been in the general form with which we found other indictments we would feel it but right and proper that the Commonwealth should specify the particular article of food which was supposed to be adulterated, and at least specify in a general way how that particular article of food was adulterated; but in the present instance the particular article of food is specified, to wit, chocolate, and there is a general statement

as to how it is adulterated. I think we will all agree on a moments reflection that the rulings of the appellate courts on this subject are perfectly right and proper. The authority cited by Mr. Baldrige is not an analagous authority at all. In the first place, as stated by Mr. Woodward, the physical examination to which the plaintiff is compelled to subject himself is always made—and I am speaking only as to the orders of this court—is always in the presence of the physician of the plaintiff. I have drawn frequent orders compelling plaintiffs in damage cases to submit to physical examinations, but I was always careful to provide that the physician of the plaintiff should be present so that no unfair advantage could be taken of the plaintiff, and that everything that was done there was done in the presence of the physician of the plaintiff. But it seems to me that the endeavor to liken a civil proceeding to a criminal proceeding is fallacious, and that is the vice of the offer. In a civil proceeding the plaintiff may be compelled to subject himself to a physical examination. At the same time he has the mutual and co-ordinate right of compelling defendant to disclose his case. Not so in a criminal case. The defendant can hold all the papers in his possession, and there is no power to compel him to produce them. He can sit on the witness stand and say I have a paper at home, and the court is powerless to make him produce evidence to establish his guilt. That is one reason. In the second place a civil suit is tried on the weight of the evidence. Each party comes in with an equal right to be heard as to the measure of proof, but in a criminal suit the burden is on the Commonwealth to establish the case beyond a reasonable doubt and these maxims of ours about the reasonable doubt that the jury must come to the firm, unwavering conviction that the defendant is guilty, have come down to us from times when judges were wont to hang a man for stealing a loaf of bread. Now I do not say in the present criminal procedure that we should get away from those old maxims, but I do say that while we adhere to those old maxims, which were adopted when they hung men for stealing a loaf of bread, such maxims ought not to be applied against the Commonwealth on the one side and then on the other hand the Commonwealth be compelled to disclose all their case, and the absence of precedent to my mind is strong proof that there is not warrant for a court compelling the Commonwealth to submit their evidence in advance to the defendants. It does seem to me that the able criminal lawyers who have defended criminals charged with grave offenses if there was any warrant for such a precedent would have brought it in force. Take for instance a murder case. The Commonwealth claim that they found on the prisoner a bloody shirt, and that those blood stains are human blood, not chicken blood, or blood which he

received butchering a hog, but human blood; now we all know that the experts on the part of the defense coach the lawyers for the defense while they cross-examine the experts of the Commonwealth, but I do not think there would be any warrant for a defendant charged with murder to say you must tear that shirt in two, and you must give my chemists one half of the alleged blood stains so that they can prepare a defense; or, to put it more mildly, that they can have the alleged blood stains analyzed. I do not know of any such precedent, and the very fact that Mr. Baldrige, after diligent search, has been unable to find one to my mind is proof that there is no warrant to force the Commonwealth to produce the evidence they are going to submit. As I said before, in a civil suit, under certain equitable rules, each side must apprise the other side of what evidence they are going to use, but I do not think it would be fair to say to the Commonwealth you must give the defendant all your side of the case so that he can examine and ransack it, and at the same time allow the defendant to keep his mouth shut. It seems to me that would be giving a defendant an unfair advantage, and it seems to me it would be unfair to compel the Commonwealth to allow a defendant to subject their samples to examination in advance, and I will overrule the application for the compelling of the production of such samples. As to experiments in open court I do not know to what extent I will go about a matter of that kind. I did rule in the formaldehyde cases where Mr. Hicks wanted to take a drink of the preservative and wanted the court to take a drink of it, and let the jury take a drink of it, I did rule that he could take a drink, but the court would not, and would not have the jury do so. Mr. Hicks was going to turn the court into a laboratory, and I think we said we would not have any laboratory here in court. I do not know to what extent I would go if there was an effort on the part of the defendant to examine samples by microscopic tests,—I will leave that matter open.

I hereby certify that I am the Official Stenographer to the Courts of Blair County, Pa., and that as such official stenographer I attended at the trial of Commonwealth vs. J. A. Koller et al., No. ——— October Sessions, 1904, and took full stenographic notes of all the proceedings of said trial, and that the foregoing opinion is a full and correct transcript from my original stenographic notes so taken as aforesaid.

J. F. MECK,
Official Stenographer.

Hollidaysburg, Pa., April 12, 1905.

IN THE COURT OF QUARTER SESSIONS OF BLAIR COUNTY.

COMMONWEALTH	}	October Sessions, 1904.
vs.		
J. A. KOLLER, <i>et al.</i>		

In re. rule to show cause why Commonwealth should not place in the hands of defendants a portion of sample for analysis by defendants, and for bill of particulars.

Argument of Mr. Wodward, Counsel for Commonwealth.

I think it will be conceded that the proposition as made on the part of the defense in this case is entirely novel. I listened with a great deal of interest to the argument on the part of defendant to discover any precedent for an application of this kind, and I fail to find that counsel, with all his diligence, has produced any authorities to justify them in making such an order. This application is two fold; but the two different features are very closely related. In the first place it is that the Commonwealth be compelled by the Court to place in the hands of the defendant here, charged with a crime, the evidence now in the possession of the Commonwealth, and to place in their hands the sample of food products which have been taken and which are supposed to be in the possession of the Commonwealth—whether they are or not does not appear in the case. A bill of particulars is the second application. We have to say in reference to the bill of particulars that the application is entirely novel in this respect: a bill of particulars in Pennsylvania, under our criminal law, can never be required in advance of an indictment. The indictment is the bill of particulars. By reason of the generality of the informations,—and that arises by reason of the fact that informations are very frequently drawn by persons unskilled—the law requires before any man shall be placed on trial that there shall be a specification of the matter set forth in the form of an indictment which is in itself a bill of particulars. Now it is a little novel in advance of an indictment that defendant could come into court merely on an information that he had been arrested, and there was no issue before the court, and ask for a bill of particulars. The indictment corresponds with the declaration in a civil suit, and until an indictment is found just as in a civil suit until declaration is filed, defendant is not in jeopardy and cannot be called upon to plead, and can at that time object to the information, unless the information upon its

face fails to disclose a crime. All that is necessary is to show that a crime has been committed. There is no allegation in this case that the indictment is not in the usual form, or that it does not specify any crime to have been committed, or does not come within the Act of Assembly as well as within our precedents in reference to form of indictments. Nor is there any reason that by reason of generality the defendant is liable to be surprised by reason of the evidence of the Commonwealth.

We come to the second proposition: That the Commonwealth be compelled to furnish a sample, or portion of the sample in their possession, that a part of the evidence, the property of the Commonwealth, be placed in the hands of men here charged with a crime. We say this is an unheard of proposition in Pennsylvania. A parallel case would be if they would come in a criminal court and ask the Commonwealth to furnish the defendant with a list of her witnesses, with the right to examine those witnesses before the court, or to specify in advance of the trial of the case exactly what evidence was to be produced. We say in the first place that a bill of particulars such as this would be is not a matter of right; it is a question that appeals to the discretion of the court entirely, and it will only be granted in such cases where defendant's rights are liable to be jeopardized by reason of the generality of the charge, that they shall furnish specifications in relation to this crime. They are not entitled to it in Pennsylvania, and there is no decision that will give them that kind of authority. We have some decisions on the general proposition. The first on the question of bill of particulars is *Commonwealth v. Powell*, 23 Sup. Ct. 370, etc., (reading same). I refer to the case of *Commonwealth v. Buccieri*, 163 Pa. 535 (and reads from same). We also refer to the case of *Commonwealth v. Applegate*, 1 District Reports 127 (reciting facts, etc.).

We had an application somewhat similar to this in Centre County for a bill of particulars, and upon this same question it was refused in an opinion which I have here.

Counsel has cited a case here from the civil courts in reference to the examination of people who are alleged to have suffered from some accident, and cites that as a parallel case. That is not a parallel case for this reason: While the court may in the exercise of its discretion compel the plaintiff seeking damages after an accident that may occur to him, while he may compel the defendant in court, and in the presence of the other side, with their expert witnesses present, that is the only rule I know of adopted in the Commonwealth of Pennsylvania, to submit himself to an examination; yet I think he will not find a case in which the plaintiff is compelled

in advance of court, out of court, and away from his own parties and his own physician to submit himself to an examination. Now this application is not made to compel the examination in the presence of the experts on one side and the other, but the application is that the defendant is to have this sample handed over wholesale to the defendant, and we say this is without merit, and the Commonwealth is not bound to do it.



